

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.338 OF 2006
IN
NOTICE OF MOTION NO.4612 OF 2005
IN
S.C.SUIT NO.4640 OF 2005
WITH
CIVIL APPLICATION NO.424 OF 2006

Nair Shashi K. ...Appellant

Versus

Smt.Savitaben Ramji Patel ...Respondent

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Mr.P.K.Dhakephalkar i/b Mr.Amit Sheth for Appellant.

Mr.A.S.Uraizee for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 22, 2006.

P.C.

1. Heard Counsel for the parties.

2. I find no reason to depart from the conclusion reached by the Court below that having

regard to the frame of the Suit, the Suit as instituted by the Respondent/Plaintiff is essentially for declaration that the Defendant is a rank trespasser and had no right of whatsoever nature to enter upon or to remain in the suit premises where hotel business is being conducted. The Court below has rightly noted in Para 11 of the impugned order that such a suit will be covered by Section 6(iv)(j) of the Bombay Court Fees Act. The argument of the Appellant that the dexterity with which the relief has been couched, would in fact, indicate that the Suit is for possession of the suit premises. It is not possible to accept this grievance. The plaint, if read as a whole, clearly indicates that it is suit simplicitor for declaration that on expiry of the conducting agreement on and from 11th March 2006, the Appellant has no concern with the hotel business and therefore, not entitled to enter upon the said premises so as to obstruct the day-to-day management of the business by the Respondent/Plaintiff who is the owner.

3. In the circumstances, this Appeal should

fail. The same is dismissed.

4. In view of the above order, Civil Application also stands disposed of.

A.M.KHANWILKAR, J.